MERGER OF JUDGMENTS.—The doctrine that a cause of action is merged in a judgment rendered upon it,[1] is generally explained by the theory that where one claim is represented by two securities of different degrees, the lower merges in the higher.[2] The most significant, and probably the only, meaning of difference in degree is that in a suit upon the judgment every question which might have been raised in the original suit, regardless of whether it was in fact put in issue, is conclusively determined;[3] and therefore the judgment forms a complete bar to a subsequent suit between the parties on the same cause.[4] The foundation for this result is the principle, old as Anglo-Saxon jurisprudence, that no one shall be twice vexed for the same cause.[5] Every jurisdiction recognizes this doctrine as applied to the judgments of its own courts;[6] and in America, its operation has been greatly extended, for under the command of the "full faith and credit" clause of the Federal Constitution,[7] each state refuses to entertain an action which has been adjudicated in a sister state.[8]

Some courts in this country hold that a judgment itself is merged when a suit upon it in an action of debt is prosecuted to judgment,[9] on the theory that this carries the doctrine of merger to its logical conclusion; but the authorities upon this point are most discordant.[10] In favor of this extension of the doctrine it is argued that the fundamental reason for merger, that there should be an end of litigation, is most applicable here; because it is unjust that a creditor should have a great number of outstanding judgments for a single debt, and should still be able to pile up costs by continuing suits upon the original judgment

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[1]Bank *v.* Town of Solon (1893) 136 N. Y. 465. The result is *a fortiori* the same when the first judgment went against the plaintiff. Young *v.* Black (1813) 7 Cranch. 565.

[2]U. S. *v.* Price (1850) 9 How. 83; Runnamaker *v.* Cordray (1870) 54 Ill. 303.

[3]Ault *v.* Zehering (1871) 38 Ind. 429.

[4]Barnes *v.* Gibbs (1865) 31 N J. L. 317; Ault *v.* Zehering *supra.* Obviously a judgment *in rem* would not so merge the cause of action that it could not be prosecuted *in personam;* Nelson *v.* Couch (1863) 15 C. B. [N. S.] 99; but a decree in equity is a bar to an action at law between the same parties on the same cause. Harrington *v.* Harrington (1891) 154 Mass. 517.

[5]Sparry's Case (1590) 5 Co. 61; Gray *v.* Bicycle Co. (1901) 167 N. Y. 348; see also Railroad Co. *v.* Mossop (1855) 17 C. B. 129.

[6]2 Black, Judgments, (2nd ed.) § 674; Freeman, Judgments, (3rd ed.) § 215.

[7]Article 4, § 1.

[8]North Bank *v.* Brown (1861) 50 Me. 214; Child *v.* Powder Works (1864) 45 N. H. 547.

[9]Gould *v.* Hayden (1878) 63 Ind. 443; Denegre *v.* Haun (1862) 13 Ia. 240. Some jurisdictions go so far as to say that a judgment on a delivery bond merges the original judgment. Frazier *v.* McQueen (1859) 20 Ark. 69; Bank *v.* Patton (Miss. 1840) 5 How. 200.

[10]*Accord,* Freeman, Judgments, (3rd ed.) § 216; note to Spring *v.* Pharr (N. C. 1902) 92 Am. St. Rep. 775; *contra,* 2 Black, Judgments, (2nd ed.) 864; Story, Conflict of Laws, (8th ed.) § 599-*a,* note; Weeks *v.* Pearson (1831) 5 N. H. 324; Griswold *v.* Hill (1840) 11 Fed. Cas. No. 5836; Andrews *v.* Smith (N. Y. 1832) 9 Wend. 53; McLean *v.* McLean (1884) 19 N. C. 530; Kelly *v.* Hamblen (1900) 98 Va. 383.

ad infinitum.[11] To this argument it is answered by other courts that the debtor has a simple and effective remedy—he may pay his debt;[12] and this reasoning, the cogency of which seems quite beyond the need of support, is sought to be fortified by the theory that there is no merger because the judgments are securities of equal degree.[13] The question may most justly be decided by simply balancing two considerations: hardship to the debtor and the necessity of final satisfaction for the creditor.

From this standpoint, that there is no merger seems much the sounder view. There is less reason for applying the doctrine in this class of cases than in that where the original cause is held to be merged in the judgment; for there the merger saves the expense and trouble of re-opening all the manifold questions which are necessary to an original litigation.[14] The fact that the plaintiff may abuse his remedy by vexatiously prosecuting a great multiplicity of suits upon one judgment seems no argument for denying him a remedy when properly used; and in case of abuse it may easily be denied.[15] On the other hand, a creditor seems entitled to as many judgments as he may in good faith procure before satisfaction; for nothing but the flight of the debtor from one jurisdiction to another could make many such suits necessary. Besides, even if the creditor had an outstanding judgment in every state of the union, a satisfaction of one discharges all,[16] and the debtor is not injured except as to costs. Even a more weighty argument in favor of this view is the effect which the doctrine of merger has in altering the position of creditors; for courts which adhere to it are compelled to hold that, with the merger of the first judgment in the second, the lien of the first upon the debtor's property is discharged,[17] and that the creditor, as a reward for his diligence, has his rights postponed to subsequent judgment liens.

To the judicial sentiment against this application of the principle of merger, the Supreme Court of California has now added the weight of its opinion in *Lilly-Bracket Co.* v. *Sonneman* (Cal. 1912) 126 Pac. 483. In a suit upon a Massachusetts judgment the defendant pleaded that it had been merged in a judgment in debt procured upon it in Washington; but the court denied this contention and permitted the plaintiff to recover.

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[11]Gould *v.* Hayden *supra.*

[12]Ames *v.* Hoy (1859) 12 Cal. 11.

[13]See Banking Co. *v.* Addington (1896) 1 Ind. Ter. 304; Mumford *v.* Stocker (N. Y. 1823) 1 Cow. 178. If a difference in degree means only that in regard to one security questions may still be raised which in regard to the other are concluded, it is submitted that the judgments are not of equal degree. Conclusive as a judgment may be, still when sued upon in a sister state, questions as to the jurisdiction of the court which rendered it, and as to fraud in its procurement may still be raised. Story, Conflict of Laws, (8th ed.) § 609. Though there is no authority for the proposition, it seems that the second judgment would set these questions at rest forever.

[14]See Weeks *v.* Pearsons *supra.*

[15]Keeler *v.* King (N. Y. 1847) 1 Barb. 390.

[16]Tarver *v.* Rankin (1847) 3 Ga. 210.

[17]Denegre *v.* Haun *supra;* Purdy *v.* Doyle (N. Y. 1829) 1 Paige 558.